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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of)
)
1998 Biennial Regulatory Review) MM Docket No. 98-43
Streamlining of Mass Media)
Applications,)
Rules, and Processes)

To: The Commission

**Comments of the Association of
America's Public Television Stations**

The Association of America's Public Television Stations ("APTS") submits these comments in response to the Commission's Notice of Proposed Rulemaking, released April 4, 1998 in the above-captioned proceeding ("Notice"). APTS supports the streamlining efforts of the Commission and its proposed electronic filing option. If the Commission mandates electronic filing, APTS recommends a phase-in period. APTS also urges the Commission to provide proof of receipt for electronic filings. Finally, APTS agrees with the Commission's proposal to streamline ownership reporting requirements, but believes the FCC should clarify that a gradual replacement of the majority of the governing board of a noncommercial licensee is not a transfer of control requiring Commission consent.

APTS is a nonprofit membership association whose members comprise most of the nation's 353 public television stations. Among other things, APTS represents its membership on a national level by presenting the

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stations' views to the Commission, Congress, the Executive Branch, and to other federal agencies and policy-makers. APTS is submitting these comments on behalf of its members.

I. THE COMMISSION SHOULD INCORPORATE A PHASE-IN PERIOD AND PROVIDE PROOF OF RECEIPT IF IT MANDATES ELECTRONIC FILING.

APTS supports the proposed option to file FCC applications and reports electronically. However, if the FCC adopts rules requiring electronic filing, APTS recommends that the Commission incorporate a substantial phase-in period to allow stations to implement the technological and training measures necessary to comply. Further, APTS urges the Commission to include a mechanism to verify timely receipt by the FCC of electronic filings. Currently, stations can request time-stamped hard copies of their filings. The FCC should provide a similar level of assurance to stations in this new electronic environment.

II. THE COMMISSION SHOULD REDUCE THE FREQUENCY OF REQUIRED FILINGS OF OWNERSHIP REPORTS FOR NONCOMMERCIAL STATIONS.

Unlike commercial broadcasters, noncommercial licensees must currently file a new ownership report within 30 days of any change in ownership information previously reported. Reported information includes changes to the board of trustees, bylaws, officers, reportable contracts, and principals' other broadcast interests. As a result, some stations end up filing ownership reports quite frequently for changes that do not significantly affect the control of the station. Reducing the frequency of reporting would

conserve the resources of public television stations. For this reason, APTS strongly supports the Commission's streamlining proposal to require ownership reporting only every four years for noncommercial licensees, as well as for commercial licensees. At the very least, reporting obligations of noncommercial licensees should not be more burdensome than those of commercial licensees.¹

III. The Commission Should Formalize Its Practice Of Requesting An Ownership Report Within 30 Days Of An Approved "Transfer Of Control", But Should Also Clarify That A Gradual Shift In The Membership Of The Board Of Directors Of A Noncommercial Broadcaster Is Not Such A "Transfer Of Control" And Therefore Does Not Require Filing a Transfer Application.

APTS supports the Commission's proposal to formalize its practice of requiring the submission of ownership reports within 30 days after the consummation of a transfer of control or assignment of a license. Codifying that obligation will place parties on clear notice as to their reporting obligations.

However, APTS urges the Commission to clarify when a noncommercial licensee is required to seek Commission consent for a transfer of control. Many noncommercial licensees are currently uncertain whether they must submit a transfer of control application (or whether they may simply report the changes in an ownership report) when the composition of their governing board changes over a period of years by more than 50 per cent. This uncertainty has resulted in stations filing more transfer

¹ Additionally, since Section 73.3555(f) exempts public broadcasters from the multiple ownership rules, the requirement in Form 323E question 4 to report the other broadcast interests of noncommercial licensees'

applications than may be necessary out of an abundance of caution, which unduly burdens both the licensees and the Commission's staff. While this issue is part of a broader pending rulemaking addressing the general issue of when there has been a transfer of control of non-stock companies,² it is an issue that the Commission can address as a clarification in connection with the current streamlining proceeding.

APTS therefore urges the Commission to resolve this matter by clarifying that changes in the composition of the governing boards of noncommercial licensees do not constitute transfers of control. The Commission has held that a gradual change in the composition of a corporate board of directors does not trigger the obligation to file a transfer of control application, so long as less than a majority is replaced at any one time.³ A similar change in the composition of the board of a noncommercial licensee should not require Commission consent.

The governing boards of noncommercial licensees are composed of individuals who are motivated by eleemosynary (rather than economic) goals. Their interests are to serve their communities and assure that their stations have the resources necessary to fulfill the goals of public broadcasting. Though membership on the board of a public television station may gradually change, the institution remains the same: its Articles and its dependence on public support set its objectives. The station's mission to

principals is unnecessary and should be removed.

² That proceeding, MM Docket No. 89-77, has been outstanding for almost ten years.

³ Tender Offers and Proxy Contests, 59 R.R.2d 1536, 1544-45 & n. 40 (1986), citing *Storer Communications, Inc. v. FCC*, 763 F.2d 436, 442 (D.C. Cir. 1985).

present high quality cultural and educational programming and services does not alter. Accordingly, the Commission should clarify that changes in the composition of the governing boards of public broadcasting licensees do not require the submission of transfer of control applications.

Conclusion

APTS applauds the efforts of the Commission to streamline its application and reporting processes. APTS supports the Commission's proposal to adopt electronic filing rules, but requests a phase-in period and a receipt mechanism. APTS supports the Commission's proposed relaxation in the frequency of filing ownership reports, which will benefit public television stations and ultimately the public whom they serve. Lastly, APTS requests that the Commission clarify that a gradual evolution in the membership of the board of a noncommercial station does not constitute a "transfer of control."

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